IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.04.2006

Coram

The Honourable Mr. JUSTICE K.MOHAN RAM

Writ Petition No.8384 of 2006
and W.P.M.P.Nos.9307 and 9308 of 2005

S.S.D. Oil Mills Limited
Rep. by its Director
Mr. D.Ramamoorthy
No.1, Village Road,
Ayyappanthangal, Chennai - 600 056. ... Petitioner

Vs.

1. The State of Tamil Nadu
   Rep. by its Secretary to Government
   Energy Department, Fort St. George,
   Chennai - 600 009.

2. The Chairman
   Tamil Nadu Electricity Board,
   K.R.R. Maaligai, Chennai - 600 001.

3. The Superintending Engineer,
   Electricity Distribution Circle,
   K.K.Nagar, Chennai - 600 078. .... Respondents

PRAYER: Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. M.Md.Ibrabhim Ali.
For Respondents : Mr.G.Vasudevan for Electricity Board.

O R D E R

The prayer in the writ petition is for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the third respondent dated 08.03.2006 in his letter No.SE/CEDC/S/DFC/AAO/HT/AS/A3/HT SC No.225/D135/06 received by the petitioner on 10.03.2006 quash the same in so far as the levy of BPSC charges a sum of Rs.1,92,416.80 and to direct the respondents to permit the petitioner to pay in ten equal instalments for the peak

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hours charges for the period from 10/2002 to 16.03.2003 a sum of Rs.3,46,084.80.

2. The short facts which are necessary for dismissal of the case and as culled out from the affidavit are set out below:

i) The petitioner filed W.P.No.37275 of 2002 for the issue of Writ of Declaration declaring Clause 'D' of the High Tension Tariff-I to the schedule of the Tamil Nadu Electricity Revision of Tariff Rates on Supply of Electricity Energy Act 1978 as null and void and to direct the respondents to refund the sum of Rs.15,57,993/- for the period from August 1997 to 2001. Pending said writ petitions, interim stay had been granted on 03.10.2002. Subsequently the said writ petition and the connected writ petitions came to be dismissed on 06.11.2003, thereafter the third respondent issued a notice on 08.03.2006 demanding a sum of RS.5,38,502/- for a period from November 2002 to 15.03.2003.

ii) Against the order dated 06.11.2003 passed in the above said batch of writ petitions, writ appeals were filed along with miscellaneous petitions seeking stay of collection of Peak Hour Charges. But the Honourable Division Bench of this Court declined to grant stay of the collection of peak hour charges for the period beyond 15.03.2003. However, collection of such amount payable on account of peak hour charges for the period between 2001 and upto 15.03.2003 was ordered to be kept in abeyance pending disposal of the writ appeals.

iii) It is the case of the petitioner that the third respondent did not raise any bill including the peak hour charges from 16.03.2003 and all of a sudden issued the impugned order dated 01.11.2004 directing the petitioner to pay the peak hour charges from 16.03.2003 to July 2003 i.e. a sum of Rs.14,04,517/- with Belated Payment Surcharge i.e. a sum of Rs.1,72,552/-.

iv) Aggrieved by the above said impugned orders, W.P.No.34091 of 2004 was also filed. As far as the peak hour charges are concerned, by an order dated 24.11.2004, this Court permitted the petitioner to pay the amount demanded by the respondents in ten equal monthly instalments. According to the petitioner all the instalments have been paid in time. Subsequently, the above said writ appeals itself were dismissed on 23.08.2005 and therefore the petitioner is liable to pay the peak hour charges from November 2002 to 16.03.2003. Therefore, the third respondent passed the impugned proceedings demanding

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the peak hour charges including the belated payment surcharge. Being aggrieved by that, the present writ petition has been filed.

3. The main contention of the writ petitioner is that in W.A.M.P.No.3021 of 2004, the Division Bench of this Court has not granted any interim stay for the period beyond 15.03.2003 and by the impugned order, the third respondent has demanded for the Belated Payment Surcharge for the period from 11/2002 to 16.03.2003 and hence the impugned order of the third respondent is highly arbitrary and illegal in so far as the levy of Belated Payment Surcharge is concerned.

4. A detailed counter affidavit has been filed by respondents 2 and 3 herein. In the said counter affidavit it is contended that when the writ petition as well as the writ appeals filed by the petitioner have been dismissed by this Court taking into consideration the merits of the case the petitioner is liable to pay the peak hour charges as well as the BPSC. Therefore, the third respondent demanded the peak hour charges together with BPSC from the petitioner. It is also stated in the counter affidavit that this Court permitted the petitioner to pay the peak hour charges of Rs.3,46,084.80 in five equal monthly instalments and the same has been paid by the petitioner.

5. Heard both sides.

6. The learned counsel for the petitioner contends that against the dismissal of the writ appeals the petitioner has filed S.L.P before the Honourable Supreme Court of India and the learned counsel fairly submits that no interim order has been passed in favour of the petitioner and furthers submits that in view of the pendency of the SLP, the interim order granted should be continued and the writ petition should be allowed.

7. Per contra Mr. G.Vasudevan learned counsel for the Electricity Board by relying upon the decision of the Honourable Supreme Court of India in the case of Adhoni Ginning Factory Vs. Andhra Pradesh Electricity Board reported in 1979 (4) S .C.C. 550 prays for the dismissal of the writ petition.

In the said decision rendered by the Supreme Court (1979 (4) S.C.C. 550), it is held as follows:

> "... The injunction granted by this Court restraining the Government from realising the arrears of enhanced charges. .... All that the injunction did was to restrain the Board

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from realising the arrears which meant that the Board was restrained from taking any coercive action such as disconnection of supply of electricity, etc., for the realisation of the arrears. The operation of G.O.No.187 dated January 30, 1995 as such was not stayed. Thus the obligation of the consumers to pay charges at the enhanced rates was not suspended though the Electricity Board was prevented from realising the arrears. It was up to the consumers to pay or not to pay the arrears. If they paid the arrears they relieved themselves against the liability to pay surcharge. If they did not pay the arrears they were bound to pay the surcharge if they failed in the appeals before the Supreme Court ...."

Further, the learned counsel for the Electricity Board relied upon a judgment of the Apex Court in Kanoria Chemicals and Industries Limited Vs. U.P. State Electricity Board reported in 1997 (5) S.C.C. 772 wherein it is held as follows:

"... It is equally well settled that an order of stay granted pending disposal of a writ petition / suit or other proceeding, comes to an end with the dismissal of the substantive proceeding and that it is the duty of the Court in such a case to put the parties in the same position they would have been but for the interim orders of the Court ....".

Further, the learned counsel submitted that there is no provision for waiver of BPSC in the Tamil Nadu Electricity Supply Code as notified by the Tamil Nadu Electricity Regulatory Commission.

8. The learned counsel for the petitioner Mr. Md.Ibrahim Ali has no answer to the judgments of the Supreme Court relied upon by Mr. G.Vasudevan learned counsel for the Electricity Board. Whereas Mr. Md.Ibrahim Ali relied upon an order dated 08.02.2006 passed by Mr. Justice P.Jyothimani, in W.P.No.1199 of 2006, which also relates to peak hour charges and BPSC. Paragraph 6 of the order reads as follows:

"6. Mr. A.Baskar, learned counsel for the respondent would fairly accept that when the matter was pending before the Court, it may not be proper to have demanded the belated payment towards collection of the charges".

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The order dated 08.02.2006 passed in W.P.No.1199 of 2006 was passed on the concession made by the learned counsel appearing for the Electricity Board.

9. But the said decision does not lay down any law. When the Law laid down by the Honourable Supreme Court of India is that an order of stay granted pending disposal of a writ petition / suit or other proceedings comes to an end with the dismissal of the substantive proceedings and that it is the duty of the Court in such a case to put the parties in the same position they would have been but for the interim orders of the Court, the Electricity Board is entitled to claim BPSC. Admittedly, when the Writ Appeals were disposed of, the interim orders of stay passed therein came to an end, the Electricity Board is well within its right to make a demand for BPSC. Therefore, the impugned proceedings cannot be said to be erroneous or arbitrary or vitiated. I find no merit in the contention of the learned counsel for the petitioner.

10. Accordingly the writ petition fails and the same is dismissed. But however, the learned counsel for the petitioner submits that in view of the financial crisis faced by the petitioner, the petitioner may be permitted to pay the BPSC amounting to Rs.1,92,416.80 in four equal monthly instalments. Mr. G.Vasudevan learned counsel for the Electricity Board fairly submits that similar orders have been passed in several other writ petitions permitting payment in intalments.

11. Considering the said submissions made by the counsel on either side the petitioner is permitted to pay the said amount of Rs.1,92,418.80 (BPSC) in four equal monthly instalments. The first instalment shall be paid on or before 07.05.2006 and the subsequent instalments shall be paid on or before 7th of every month. If the petitioner commits default in the payment of successive instalments, the entire amount will become due.

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12. With the above directions, the writ petition is dismissed. No costs. Consequently, the connected WPMP is also dismissed.

srk

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary to Government
   The State of Tamil Nadu
   Energy Department, Fort St. George,
   Chennai - 600 009.

2. The Chairman
   Tamil Nadu Electricity Board,
   K.R.R. Maaligai, Chennai - 600 001.

3. The Superintending Engineer,
   Electricity Distribution Circle,
   K.K.Nagar, Chennai - 600 078.

+ one cc to Mr. G. Vasudevan, ADvocate sr o. 20021
+ one cc to Mr. M. Md Ibrahim Ali, Advocate sr no. 19717

JSE (CO)
NM(28.04.2006)

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